WILL OF MARY H. HIRST

Who Died April 2d, 1918.

I, Mary H. Hirst, of the City of Philadelphia, Single-woman, do hereby make this my last Will and Testament, hereby revoking and making void all former Wills by me at any time heretofore made.

I direct that all my just debts and funeral expenses be paid out of my Estate as soon after my decease as conveniently may be.

I give and bequeath unto my grand-niece, Virginia Cramp, my turquoise ring and the gold neck chain my father gave me, also the silver spoons and ladle marked "M. H." which were my father's first wife's, and the six silver forks marked "M. H. H.", also my solitaire diamond ring and my sister Jane's old fashioned diamond cluster ring.

I give and bequeath unto my niece, Amy Cramp, my topaz breast pin and ear-rings, my short watch chain with topaz ornaments, my large ruby ring, my cameo pin, my three cluster opal pin, the bronze candelabra with glass drops, one card table in entry, Grand-father McCallas' portrait, the two small pictures Madonna" and "Taking a Cup of Tea", the gold hoop ear-rings and pin, the corner closet in dining room and the old fashioned dressing table that is in my room.

I give and bequeath unto my niece, Helen McIntyre, the enamel lace pin her father gave me, also my India shawl, the mahogany bed-stead with the high carved posts, one old mahogany bureau and wash-stand, the brass candelabra, coral pin, and Grandfather Kennedy's portrait and the large Prayer Book with notices of marriages, deaths and births. (If Helen McIntyre is not living at the time of my death, the bed-stead, bureau and wash-stand are to go to Amy Cramp, if she wants them).

I give and bequeath unto my niece, Edith Graham, my garnet pin and ear-rings, square mouring pin with hair, my mother's small picture (framed) and sister Hannah's portrait, one card table, and bronze candle sticks (Storks).

I give and bequeath unto my niece, Alice Wilts, my opal ring and my diamond ear-rings which I request her to have made into two rings for her daughters, Alice and Marcia; also the two small pictures painted on wood, the wardrobe with glass doors, the black walnut tea table, two bronze and china bouquet holders, old rocking chair in my room, portraits of my father and mother, and my cluster pin.

I give and bequeath unto my grand-niece, Alice Wilts, my watch, my small watch-chain with sapphire, ruby and diamond ornaments and my twisted gold lace pin.

I give and bequeath unto my niece, Mira Gibbs, my solitaire diamond lace pin with bird hanging, my sapphire ring, my gold thimble, the mosaic pin, the mourning pin and ear-rings.

I give and bequeath unto William Cramp, my lace pin with solitaire diamond center, my gold sleeve buttons and the oil painting in the parlor "Coopers Creek".

The old engravings, (names on backs) are to be given to Alice Wilts and Amy Cramp. The Grand-father's chair and Grand-mother's chair are to be given to the grand-nieces, each one. All the china ornaments and contents of the corner china-closet to be divided among my nieces, Amy Cramp to do the dividing, and all the pictures and books to be divided among my nieces, Amy Cramp to do the dividing, as each one wishes them.

The bedding, table and household linen are to be equally divided among my five nieces. The three small Windsor Chairs are for the three grand-nieces. The other Windsor Chairs, six in number, which are over one hundred years old and have always been in the family, are to be divided among my nieces. The silver spoons, except those heretofore disposed of, and any other silver, is to be divided as near equal as possible among my grand-nieces.

I give, devise and bequeath all the rest, residue and remainder of my Estate, real, personal or mixed, whatsoever or wheresoever situate, in trust, unto the Rector, Church Wardens and Vestrymen of Christ Church, Philadelphia. The income of my Estate to be equally divided between

Christ Church and Christ Church Neighborhood House. I hereby authorize and empower the said Rector, Church Wardens or Vestrymen of Christ Church, to sell and dispose of all or any part of my real estate and to extinguish any ground rents or to change any of my investments, either at private or public sale, as they in their discretion shall deem necessary or expedient and advantageous so to do, and to re-invest the proceeds arising from the sale or sales in good and productive securities or real estate and to use the income therefrom, one half to be given to the Rector, Church Wardens and Vestrymen of Christ Church for the support of Christ Church and one half to be given to Christ Church Neighborhood House. And I further empower the said Rector, Church Wardens or Vestrymen of Christ Church to make and execute a sufficient deed or deeds of conveyance for any portion of my real estate which they may sell to the purchaser or purchasers thereof, without any liability on the part of such purchaser or purchasers to see to the application of the purchase money.

I nominate, constitute and appoint my nieces, Amy Cramp and Alice Wilts, Executrixes, of this my last Will and Testament.

In Witness whereof I have hereunto set my hand and seal this 28th day of October A. D. 1916.

MARY H. HIRST [SEAL]

Signed, sealed, published and declared by the said Mary H. Hirst as and for her last will and Testament, in the presence of us, at her request and in her presence, and in the presence of each other, have subscribed our names as witnesses thereto.

THOS. W. SNOWDEN
1821 Wallace St. Philada.
MARIE E. SHERIDAN
3422 N. 33rd St. Phila.

Estate of MARY H. HIRST, Deceased

OPINION OF JAMES B. SHEEHAN REGISTER OF WILLS

ADMITTING THE WILL TO PROBATE

MAY 3, 1919

WHITE & WETHERILL
Attorneys for Christ Church, Legatee Under Will

Press of Allen, Lane & Scott, Philadelphia.

ESTATE OF MARY E. HIRST, DECEASED.

The testamentary capacity of a testatrix eighty-two years of age who leaves to charity the principal of her estate of $60,000, could not easily escape suspicion of her next of kin—nieces and nephews—practically ignored by the dispositive terms of the will. Such combinations rarely fail to evolve a contest. And there often exists a fighting chance for the contestants. Skilfully group instances of the slowing faculties, the foibles and eccentricities, of advanced age, minimize or veil the intervening periods of reasonable conduct, and inference of the abnormal and irrational can acquire a persuasive basis. Therefore the Supreme Court has wisely determined that an issue shall be awarded only if upon a review of the entire testimony a verdict of a jury against the will should be sustained.—Harrison's App., 100 Pa. 458; Robinson *vs.* Robinson, 203 Pa. 400; McGinley's Est., 257 Pa. 478, etc.

This testatrix, a woman of intelligence and cultivation, personally gave instructions, for the preparation of the will, to a reputable and proficient real estate man, who had been her business agent for 20 years. He drafted the document, read it to her, she read it herself, and then signed her name legibly, in the presence of the subscribing witnesses—the scrivener and his clerk—who testified the testatrix displayed a perfect comprehension throughout the proceedings, expressing to them her interest in the beneficiary—Christ Church—and its charitable work, and her preference for the church as an object of her bounty rather than her "heirs." The will is dated October 28th, 1916, and the testatrix lived a year and a half thereafter, dying on the 2d of April, 1918. The will is practically similar to a former will executed by the testatrix in 1912; a few items relating to the personal effects were altered, and the residue of the estate

divided between "Christ Church" and its "Neighborhood House," instead of being left entirely to Christ Church. Consequently we have a scheme of distribution persisting in the mind of the testatrix for at least four years. And the relations of the testatrix to the church make it a very natural object of her consideration. Apparently she never displayed any special affection for her kindred; nor any recognition of a strong clan or family spirit which was traversed by the exclusion of her next of kin. Imagination must labor with unusual diligence to discover any compelling cause for suspicion in the contents of this will and the facts surrounding the execution of the document.

On behalf of the caveators there was adduced testimony illustrating forgetfulness of the testatrix, tedious repetition, wandering from the subject in conversation; testimony that she drank liquor at times to a degree that would make her talkative or drowsy; and that she expressed fear of poverty, though possessing ample means of support, and declared that she saw from her window objects not apparent to the vision of others. But all of these things may be present without creating testamentary incapacity. Peculiarly relevant is the case of Wilson *vs.* Mitchell, 101 Pa. 495, wherein it is said:—

> "A testator's memory may be very imperfect; it may be greatly impaired by age or disease. He may not be able at all times to recollect the names, the persons or families of those with whom he had been intimately acquainted; may at times ask idle questions, and repeat those which before had been asked and answered; and yet his understanding may be sufficiently sound for many of the ordinary transactions of life."

And the fact that a testator was addicted to the use of intoxicating liquors will not affect his testamentary capacity, if he was not under the influence of liquor at the time the will was executed. Tasker's Est., 205 Pa. 455. Also, that which is alleged to be a delusion must appear to be the inducing cause of the testamentary act. Philadelphia Trust Company *vs.* Drinkhouse, 17 Phi

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delphia Trust Company *vs.* Drinkhouse, 17 Phila. 23; Masseth's Est., 213 Pa. 136. And the "hallucinations" in the case before the Register are quite ineffectual in comparison with the "red devils" alleged to have been seen by the testator in Watmough's Est., 258 Pa. 22; and the melancholia of testator who believed himself guilty of embezzlement, and that he—though wealthy—was a pauper, in Ross's App., 243 Pa. 122. Authorities on all of these points might be multiplied in great number.

Therefore, giving all possible weight to the testimony for the contestants, there would remain a profound doubt whether it would even counterbalance the presumption of law as to the validity of the will, and the testimony of the subscribing witnesses.

The affirmative evidence for the proponents, however, not only is sufficient to establish the testamentary capacity of this testatrix, but it also renders the value of much of the negative testimony uncertain. The doctors, the clergyman and the business agents, in their professional relations with the testratrix, discovered no evidence of excessive use of liquor; no indications of a mind disordered in general, or of specific delusions. And it is futile to refine upon minor contradictions in the testimony, and assume all of these professional men to have been mistaken or deceived in their estimate of the mentality of the testratrix, for such a combination of credulity and error is not reasonably conceivable. Doubtless much forgetfulness of old age was present, but the testatrix was constantly signing checks for her expenses, paying the wages of nurse and servants, maintaining some supervision of her household, and we search the testimony in vain for any failure of memory or error of judgment in matters of importance to her welfare. The nurse recites some examples of unusual acts and wandering speech of the testatrix. But it is astonishing that this witness, from her several years' daily experience, was able to recall so few instances of aberrant speech and conduct of this invalid, crippled with rheumatism, to whom the weary days must have brought many despondent moods inspired

by petulance and pain. Though she occasionally threw unaddressed letters from her window, to the postman, or to some one she, in error, thought was he, this fact can have but little significance in view of the number of correctly addressed envelopes, containing entirely coherent letters, submitted in evidence.

Counsel for caveators portray the mind of the testatrix as constantly clouded by senility, liquor and drugs during the period within which the will was executed. But the series of letters and checks of the testratrix, offered in evidence, challenges and refutes this allegation with irresistible emphasis. . These letters afford an illuminating illustration of the reasoning power of the testatrix, and suggest a mind cognizant of her affairs and amply capable of understanding to a degree that would permit her legally to make a testamentary disposition of her estate. Upon a review of the entire evidence it must be held that an issue would be unwarranted.

The next of kin of this testatrix in their testimony undoubtedly maintained a scrupulous regard for the facts within their knowledge, and believe in the justice of their contest. But they could not know the testamentary law's indulgence for the eccentricities and failing faculties of age in preserving for it the only remaining power, in its helplessness and isolation, to secure and control comforts and care so vitally necessary.

The caveat is dismissed, issue *devisavit nel non* refused, and it is ordered that the will be admitted to probate.

JAMES B. SHEEHAN,
Register.